



United States General Accounting Office
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Office of the General Counsel

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July 25, 2000

The Honorable William V. Roth
Chairman
The Honorable Daniel Patrick Moynihan
Ranking Minority Member
Committee on Finance
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

The Honorable Bill Archer
Chairman
The Honorable Charles Rangel
Ranking Minority Member
Committee on Ways and Means
House of Representatives

Subject: Department of Health and Human Services, Health Care Financing
Administration: Medicare Program; Medicare+Choice Program

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Health and Human Services, Health Care Financing Administration (HCFA), entitled "Medicare Program; Medicare+Choice Program" (RIN: 0938-AI29). We received the rule on July 10, 2000. It was published in the Federal Register as a final rule on June 29, 2000. 65 Fed. Reg. 40170.

The final rule responds to comments on a June 26, 1998, interim final rule implementing the Medicare+Choice (M+C) program and revising the interim rule to reflect changes made to the M+C program by the Balanced Budget Refinement Act of 1999 (BBRA).

Enclosed is our assessment of HCFA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that HCFA complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is William Scanlon, Director, Health Financing and Public Health Issues. Mr. Scanlon can be reached at (202) 512-7114.

Robert P. Murphy
General Counsel

Enclosure

cc: Ms. Jacquelyn Y. White
Deputy Executive Secretary to
the Department
Department of Health and Human Services

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
HEALTH CARE FINANCING ADMINISTRATION
ENTITLED
"MEDICARE PROGRAM; MEDICARE+CHOICE PROGRAM"
(RIN: 0938-AI29)

(i) Cost-benefit analysis

In the Regulatory Impact Analysis that HCFA did, the impact of payment changes made pursuant to the interim rule to implement a fairer payment system are discussed in detail.

The two changes made by the Balanced Budget Refinement Act in the payment methodology contained in the final rule are quantified. First, the bonus payments for M+C organizations that enter previously unserved counties is estimated to result in additional payments of \$.1 billion over 3 years. However, HCFA points out that this estimate could be high or low based on the number of organizations that attempt to enter these markets and how successful those organizations are in enrolling beneficiaries.

Second, the Act lowers the reduction in the national per capita Medicare+Choice growth percentage from a 5-percent reduction to a 3-percent reduction in calculating the 2002 payment rates. This change will provide an additional \$80 million in payments to plans in 2002 and an additional \$560 million over 5 years.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

HCFA performed a Final Regulatory Flexibility Analysis in connection with the June 26, 1998, interim rule. 63 Fed. Reg. 34968. Since the final rule implements only limited changes to the interim rule, HCFA did not perform a new final analysis. However, the Regulatory Impact Analysis for the final rule considers HCFA's 1-year experience under the interim rule and uses a statistically-based model to evaluate the impact of risk-adjusted payments. These impacts are discussed on both a geographic basis and organization size.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

HCFA states that the final rule does not impose a federal intergovernmental or private sector mandate of \$100 million or more, as defined in the Unfunded Mandates Act of 1995.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

HCFA waived notice and comment procedures for the final rule as impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). HCFA states that a number of the provisions derived from the Balanced Budget Refinement Act of 1999 took effect either upon enactment of the BBRA or January 1, 2000, irrespective of whether regulations had been issued implementing the provisions. In addition, section 1871(b)(2)(B) of the Act provided that a notice of proposed rulemaking was not required if a statute established a specific deadline for implementation, which was less than 150 days after the enactment of BBRA.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule requires revisions to previously approved information collections. HCFA has requested comments on these revisions, and in the preamble to the final rule discusses the manner in which the collections have been revised. It estimates the new annual burden based on the revisions.

Statutory authorization for the rule

The final rule was issued pursuant to the authority of sections 1102, 1851 through 1857, 1859, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395w-21 through 1395w-27, and 1395hh), section 1301, 1306, and 1310 of the Public Health Service Act (42 U.S.C. 300e, 300e-5, and 300e-9), 31 U.S.C. 9701, 44 U.S.C., chapter 35, and the Balanced Budget Refinement Act of 1999 (Pub. L. 106-113).

Executive Order No. 12866

The final rule was reviewed by the Office of Management and Budget and found to be an “economically significant” regulatory action, which complies with the requirements of the Order.

Executive Order No. 13132 (Federalism)

HCFA notes in the preamble to the final rule that the revisions it is making to the June 26, 1998, interim rule do not require a federalism impact statement under the Order. However, the interim rule did have an impact statement, and in responding to those comments, HCFA includes a voluntary federalism impact statement in the preamble concerning preemption of state law.